

### **REMARKS/ARGUMENTS**

These remarks are made in response to the Office Action of October 8, 2004 (Office Action), in which claims 1-55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,366,919 to O'Kane, Jr., *et al.* (O'Kane) in view of U.S. Patent No. 5,870,667 to Globuschutz (Globuschutz) and further in view of U.S. Patent No. 6,742,141 to Miller (Miller). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due.

As an initial matter, Applicants wish to thank the Examiner for a thorough review of the Application and for pointing out the minor misspellings in each of Claims 18 and 40. Applicants have amended Claims 18 and 40 to correct the misspellings. Applicants also have amended Claims 1, 3, 5, 6, 32 and 54 to further clarify the invention. Page 7, line 25 of the Specification has been amended to correct a minor misspelling. The amendments are fully supported in the Specification, and no new matter has been added by virtue of the amendments.

#### **I. Applicants' Invention**

It may be helpful before addressing the cited art to summarize certain features of Applicants' invention. Applicants' invention is directed to systems and methods for providing automated building service brokering. Multiple devices in different locations can be automatically monitored, according to Applicants' invention, so that service providers are timely and efficiently alerted to a need for repair or maintenance to be performed on a particular building at a specific site. (See Applicants' Specification, p. 5, lines 1-3.)

As recited in independent Claim 1, an automated building service broker, according to one embodiment of Applicants' invention, can include a Global Positioning System (GPS) data processor for processing GPS data associated with one or more

service providers communicatively linked to one or more building systems and to the automated building service broker. The automated building service broker, moreover, can include an event handler that is responsive to building system maintenance and repair events received from the communicatively linked building systems.

Additionally, the automated building service broker can include a service provider selector for selecting a particular service provider to respond to a particular received maintenance and repair event received from a particular communicatively linked building system. The selection, more particularly, can be based on (a) whether the selected service provider is suitable to perform the required maintenance or repair on the particular communicatively linked building system, and (b) the geographic position of the particular service provider relative to the particular building system as reported by GPS data associated with the particular service provider.

Another aspect of the Applicants' invention is an automated building services broker system. As recited in Claim 3, the automated building services broker system, according to another embodiment, can include an automated building services broker. The automated building services broker, more particularly, can include an event handler, an event log database, a maintenance database, a service provider database, equipment database, and a historical database.

The automated building services broker system can further include a plurality of building sites. Each building site can have at least one building system that includes a control system for monitoring the status of the building system and/or detecting anomalies in the building system. The system additionally can include one or more service providers communicatively linked to the automated building services broker, each service provider being able to perform maintenance and repair on at least one building system at one of the building sites.

## **II. The Cited References**

O'Kane is directed to a system for managing telecommunication sites, the system organizing site-specific data in different databases stored in an electronic storage device either at different sites or as part of a computer. (Col. 3, lines 50-63.) As described, O'Kane stores site-specific data relating to equipment in one database. Data relating to technicians, such as their training and specialties, is stored in another database. Maintenance information is stored in still another database, and general telecommunications equipment component data, such as performance capabilities and parameters, is stored in yet another. (Col. 3, line 64 through Col. 4, line 9.) O'Kane's linking of the databases enables various events, such as the ascertainment of status and the determination of feasibility of proposed modifications at different sites, to be done over a data network.

Globuschutz similarly pertains explicitly to the management of communications networks. In particular, Globuschutz discloses a support system architecture intended to facilitate the scheduling and dispatching of technicians for serving network end users. (Col. 2, lines 20-37; Col. 4, line 62 through Col. 5, line 52.) Globuschutz is cited in the Office Action as disclosing an element not found in the other references, namely, the use of a GPS.

Miller, in contrast to each of the other references cited in the Office Action, pertains expressly to computer software, not to telecommunication sites or any other physical plant or facility. Miller is expressly and exclusively directed to executable code that provides support for "software-based systems." (Col. 7, lines 1-3; Abstract.) Miller discloses a database comprising executable code for monitoring, diagnosing, and solving software problems. (Col. 3, lines 25-56; Col. 4, line 41 through Col. 6, line 9; Abstract.) In this sense, Miller deals not with scheduling maintenance or responding to plant facility

problems in any manner or form, but rather with responding to problems involving machine-readable code buried within a computer.

**III. There Is No Adequate Basis For The Asserted Combination of O'Kane, Globuschutz, and Miller**

Claims 1-11, including amended independent Claims 1 and 3, were rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Kane in view of Globuschutz and further in view of Miller.

As the Examiner correctly points out, neither O'Kane nor Globuschutz teach or suggest every feature of Applicants' invention. For example, neither O'Kane nor Globuschutz teach or suggest an event handler for responding to building system maintenance and repair events as recited in both independent Claims 1 and Claim 3. Accordingly, Miller is relied on to overcome the lack of such an element in O'Kane and Globuschutz. As noted above, however, Miller pertains to a field that is not only wholly unrelated to Applicants invention but is far removed from that of both O'Kane and Globuschutz as well.

Miller as already described is directed to a database whose entries contain executable code. Miller's software-based invention can be used, on an "as-needed" basis, for identifying a software condition in need of a solution, and, in response thereto, supplying executable code that modifies the state of a computer system so as to implement the solution. (See, e.g., Col. 3, lines 31-58.) Miller's monitoring and maintenance of software systems, however, has nothing to do with monitoring or maintaining either telecommunication equipment or building services systems.

Miller comes from the domain of computer science and software engineering, dealing as it does with the executable code that drives software-based systems. This is a wholly distinct field from that dealing with scheduling arrivals and work orders for

efficiently managing technical support at physically disparate telecommunication sites, the field from which both O'Kane and Globuschutz originate. To suggest a commonality between Miller and either of the other two references is to impute to mechanical and civil engineers the knowledge of a software engineer or computer scientist. The internal, code-specific workings of computer software systems that Miller deals with are simply not the domain of engineers and technicians dealing with the types of problems addressed by O'Kane and Globuschutz, and they are most definitely far removed from the domain of building system monitoring and maintenance that is the focus of Applicants' invention.

Moreover, the nature of the problem to which Miller is addressed – "emergent" software problems stemming from the use of multiple software applications supplied by different software vendors – has nothing to do with managing or monitoring a physical facility such as a telecommunications site or building system. Miller is concerned with providing code-based solutions for incompatible software. O'Kane and Globuschutz are each directed to managing physical resources for maintaining and upgrading telecommunications equipment.

Miller deals with machine-readable code. O'Kane and Globuschutz deal with the allocation of technicians to disparate telecommunications sites and the maintenance of updated records. Miller focuses on the running of software at the machine-code level. O'Kane and Globuschutz focus on physical facility and equipment records regarding parameters such as physical location of customers, operating hours at a site, and various equipment requirements such as cooling capacities, heat and humidity levels, and other equipment specifications.

A rejection of claims based on a combination of references requires some suggestion or motivation for the combination other than an applicant's own specification. *See, e.g., In re Warner*, 379 F.2d 1011 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). The mere fact that references can be combined does not render a combination obvious if

there is no suggestion of the desirability of the combination in the prior art. *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990).

At page 3 of the Office Action it is simply stated that "[i]t would have been obvious to a person of ordinary skill in the art to modify the disclosures of O'Kane and Globuschutz to include the teachings of Miller with the motivation to monitor, diagnose, and solve specific problems." (emphasis supplied.) But it must be observed that monitoring, diagnosing, and solving problems is too broad to define a particular field of art; monitoring, diagnosing, and solving problems describes virtually every conceivable control system that exists or ever will exist. By definition, all control systems include the collection and analysis of feedback from a given set of functions for the purpose of controlling the functions. All control systems may be implemented by monitoring and/or systematically modifying parameters and/or by preparing control reports that initiate useful action with respect to significant deviations and expectations. Were it enough to say that an existing system suggests another by virtue of the fact that the existing system monitors, diagnoses, and solves a problem, the standard would render virtually every system obvious in view of existing ones. Such a standard would be unworkable, and it is not the one that has been applied in past cases.

The long-established standard that applies in cases such as this one is directed to determining whether or not the references constitute nonanalogous art, which is basically a twofold inquiry. *See, e.g., In re Wood*, 599 F.2d 1032 (CCPA 1979). First, it must be determined whether the references are from the same field of endeavor, and, if not, then it must be determined whether the references pertain to a similar problem. *Id.*; *See also State Contracting & Eng'g. Corp. v. Condotte America, Inc.* 346 F.3d 1057 (Fed. Cir. 2003). As already noted, O'Kane or Globuschutz come from a field wholly distinct from Miller. More fundamentally, however, it is beyond dispute that providing executable code to deal with "emergent" software problems stemming from the use of software

applications supplied by multiple vendors is not related to problems of scheduling work orders or maintaining records on physical equipment. Under the proper standard, therefore, Miller is nonanalogous art with respect to both O'Kane and Globuschutz.

Applicants thus respectfully assert that the combination of O'Kane, Globuschutz, and Miller fails to provide a *prima facie* basis for rejecting independent Claims 1 and 3, as amended, under 35 U.S.C. § 103(a). Since each of dependent Claims 2, 4-11 provide yet additional limitations, the combination of O'Kane, Globuschutz, and Miller likewise fails to provide a *prima facie* basis for rejecting these dependent claims under 35 U.S.C. § 103(a). Accordingly, Applicants respectfully request that the rejection of Claims 1-11 be withdrawn

#### **IV. The Asserted Combination of O'Kane, Globuschutz, and Miller Fails to Render the Invention Obvious**

Applicants respectfully maintain that, even if it were assumed for the sake of argument that there is a basis for combining O'Kane, Globuschutz, and Miller, the combination is nevertheless inadequate to render Applicants' invention obvious since none of the references disclose or suggest each of the features of the invention.

For example, as correctly noted by the Examiner and as already noted, neither O'Kane nor Globuschutz disclose or suggest an event handler, as recited in independent Claims 1 and 3. Moreover, even were Miller properly combinable, Miller too would fail to disclose or suggest such an event handler as taught by Applicants' invention. As discussed above in detail, Miller discloses identifying a software condition in need of a solution, and, in response thereto, supplying executable code to modify the state of a computer system so as to implement the software solution. (See, e.g., Col. 3, lines 31-58.) Techniques for identifying and correcting conditions in machine-readable or executable code, however, are completely divorced from responding to building system

maintenance and repair events associated with a building system. By any reasonable stretch of the imagination, a teaching pertaining to executable code has nothing remotely to do with monitoring or effecting repairs and maintenance of a building system as recited in independent Claims 1 and 3. Accordingly, even were Miller combinable with the other cited references, the combination still fails to even suggest each feature recited in independent Claims 1 and 3.

Similarly, none of the cited references discloses each of the features of amended independent Claims 12, 32, 34 and 54. For example, neither O'Kane nor Globuschutz cited by the Examiner against Claims 12-55 discloses monitoring a communications link for an electronic response to an electronic notification, where the electronic notification is in response to a servicing need for a building system. At Col. 7, lines 57-62, O'Kane speaks only to providing "[a]ppropriate field feedback with updating of spares inventory and client notification," but this does not suggest electronic monitoring of any kind, let alone of a communications link. (See, also, FIG. 6B.) O'Kane, more particularly, does not suggest monitoring a communications link for an electronic response to an electronic notification, as with Applicants' invention. Any inference to the contrary is undercut by other portions of O'Kane that more explicitly describe what the intended meanings are of "appropriate field feedback" and "client notification." Specifically, at Col. 5, lines 14-28, O'Kane describes field feedback and client notification as referring to a technician sending a work order through "an automatic dial up" or "conventional communication path," and later providing a "technician's response to the work order," which is sent through a data communication network in the form of an electronic report. (Col. 5, lines 14-28.) This type of conventional follow-up is consistent with the overall focus of O'Kane, which is on updating distinct databases rather than electronic monitoring and coordination. There is simply no suggestion in O'Kane that a data communication network or any other electronic network is in anyway monitored for an electronic



response to an electronic notification, as recited in each of amended independent Claims 12, 32, 34 and 54.

Similarly, Globuschutz does not teach or suggest every feature recited in amended independent Claims 12, 32, 34, and 54. Globuschutz, for example, fails to teach or suggest monitoring for an electronic response to an electronic notification, where the electronic notification is in response to a servicing need for a building system. Globuschutz relies on status indicators (e.g., Video Ready, Video Capable, No Video Drop, and Not Available status indications) and uses network monitoring, but only to detect faults in elements of a network. (Col. 5, lines 11-51; Abstract.) When a technician in Globuschutz uses a GPS system to continuously monitor his or her location, it is the technician who reports this information; nothing is automatic. (Col. 6., lines 36-39.) Accordingly, nothing in Globuschutz teaches or suggests monitoring for an electronic response to an electronic notification, where the electronic notification is in response to a servicing need as recited in amended independent Claims 12, 32, 34, and 54.

Applicants respectfully submit that because the prior art fails to teach or suggest each element recited in amended independent Claims 12, 32, 34, and 54, there is no proper basis for rejecting any of these independent claims under 35 U.S.C. § 103(a). Moreover, since each of the claims that depend from amended independent Claims 12, 32, 34, and 54 recite yet additional elements, there is likewise no basis for rejecting dependent Claims 13-31, 33, 35-53, or 55. Accordingly, Applicants respectfully request that the rejection of Claims 12-55 be withdrawn.

### **CONCLUSION**

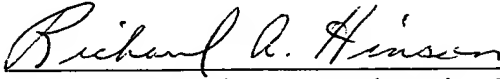
Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the

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Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

Date: 1/5/05

  
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